

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Tyran Wood,	:	
Plaintiff	:	Case No. 2:12-cv-00978
v.	:	Judge Frost
Gary Mohr, <i>et al.</i> ,	:	Magistrate Judge Abel
Defendants	:	

Report and Recommendation

This matter is before the Magistrate Judge on defendant John Gardner's April 24, 2013 motion to dismiss with prejudice the amended complaint for insufficient process of service (doc. 21).

Plaintiff argues that his amended complaint was filed on April 11, 2013, and the time for serving defendant Gardner has not elapsed. Defendant maintains that plaintiff named as defendants "Unknown Number of John Doe Members of Collegial Review Committee" in his October 30, 2012 complaint. Defendant maintain that plaintiff had 120 days from the filing of the complaint to identify and serve the "John Doe" defendants and that he failed to do so.

In his response in opposition to the motion to dismiss, plaintiff said that he is in the process of serving Gardner.

Dismissals pursuant to Rule 4m of the Federal Rules of Civil Procedure are without prejudice. The Magistrate Judge RECOMMENDS that defendant's John

Gardner's April 24, 2013 motion to dismiss with prejudice the amended complaint for insufficient process of service (doc. 21) be DENIED.

It is ORDERED that plaintiff has until September 26, 2013 to obtain service on defendants Potter and Eddy.

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-152 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Willis v. Sullivan*, 931 F.2d 390, 401 (6th Cir. 1991).

s/Mark R. Abel
United States Magistrate Judge